

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,452-27,454

In re: 906 Gallatin Street, N.W.

Ward Four (4)

DAVID NUYEN
Housing Provider/Appellant

v.

SABINO DE GUZMAN, et. al.¹
Tenants/Appellees

DECISION AND ORDER

May 9, 2008

PER CURIAM. This case is on appeal from the District of Columbia Department of Consumer and Regulatory Affairs (DCRA), Rental Accommodations and Conversion Division (RACD), to the Rental Housing Commission (Commission). The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501-510 (2001), and the District of Columbia Municipal Regulations (DCMR), 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

I. PROCEDURAL HISTORY

On March 1, 2002, Sabino De Guzman, Sandra Reyes, and Claudia Payes, the tenants of units 201, 302, and 304 at the housing accommodation located at 906 Gallatin Street, N.W., filed Tenant Petitions (TP) 27,452, 27,453, and 27, 454 respectively, with

¹ The Rent Administrator, pursuant to 14 DCMR § 3909 (2004), consolidated for review the tenant's petition, TP 27,452, with TP 27,453 and TP 27,454.

the Housing Regulation Administration (HRA), DCRA. In their separate petitions, the tenants alleged that the housing provider, David Nuyen, doing business as USA Home Champion Realty: 1) took a rent increase larger than the amount of increase permitted by the Act; 2) took a rent increase before 180 days passed from the last increase; 3) failed to provide a proper thirty (30) day notice of rent increase before the increase became effective; 4) failed to file the proper rent increase forms with RACD; 5) filed a rent ceiling with RACD that was improper; 6) took a rent increase while their units were not in substantial compliance with the D.C. Housing Regulations; and 7) substantially reduced services and/or facilities provided in connection with their units.

On September 12, 2002, Senior Hearing Examiner Gerald J. Roper presided at the initial hearing on the tenant petitions. Present at the September 12, 2002, hearing were the petitioners, the above-named tenants and their counsel. The housing provider, David Nuyen, was not present. However, Mr. Francis Ogundeji was present at the hearing. Mr. Ogundeji identified himself as an employee and resident manager for the housing provider, responsible for the collection of rents and other duties in conjunction with USA Champion Home Realty. Mr. Ogundeji stated that he had not received notice of the hearing, but had heard from one of the tenants that a hearing on the petitions was scheduled. Mr. Ogundeji further stated that David Nuyen was the owner of the housing accommodation as well as USA Champion Home Realty, and that Mr. Nuyen at that time was incarcerated at the Federal Penitentiary at Petersburg, Virginia.

The hearing examiner determined, after reviewing the case file, that the housing provider, David Nuyen, had not been notified of the impending hearing. At the September 12, 2002, hearing Mr. Ogundeji agreed to accept the tenant petitions on behalf

of Mr. Nuyen and the hearing examiner rescheduled the hearing on the petitions to October 16, 2002. The hearing on the petitions was held on March 24, 2003.

On June 14, 2004, the hearing examiner issued his decision and order. The hearing examiner made the following findings of fact:

1. The subject housing accommodation located at 906 Gallatin Street, N.W., is registered with the RACD.
2. The Housing Provider is David Nuyen.
3. The above-captioned Tenant Petition/Complaints were filed with the RACD on March 1, 2002, and consolidated by the Rent Administrator for hearing on September 12, [2002].
4. At the hearing on September 12, [2002] were three Petitioners and counsel for the Petitioners, Elizabeth Campbell. Also present was Francis Ogundeji, the resident manager for the housing accommodation. Mr. Ogundeji; claimed he was not in attendance as a representative but as an observer. He informed the Examiner that the Respondent was incarcerated. After the Examiner discovered that the Respondent had not been served notice of the hearing, Mr. Ogundeji accepted service of the Tenant Petition/Complaints and informed the Examiner that he would serve them on Mr. Nuyen and make arrangements for representation at the next scheduled hearing date. The Examiner obtained the Respondent's address at the Petersburg Federal Correction Facility from Mr. Ogundeji and instructed the Scheduler to send notice of the hearing and the petitions to the Respondent. The matter was reconvened on October 16, 2002.
5. The hearing proceeded on October 16, 2002, in the absence of the Respondent or a representative of the Respondent. Present at the hearing were Petitioners Sabino De Guzman, Sandra Reyes and Claudia Payes. Petitioners Marta Buruca and Juan Fumes did not appear. The Respondent was sent notice as David Nuyen dba USA Home Realty, 2021 Sandstone Court, Silver Spring, Maryland 20904. U.S. Postal Service Track and Confirmation number 0302-0980-0001-9801-8667 indicated that the notice was delivered on September 16, 2002.

6. The October 16, 2002 hearing was rescheduled to February 24, 2003. On February 21, 2003, the Respondent, David Nuyen, wrote the Rent Administrator requesting a continuance of the February 24, 2003 hearing to January 2004. The motion was not considered because it was untimely filed.
7. The February 24, 2003 hearing was administratively rescheduled to March [24], 2003 because of a conflict with the interpreter.
8. At the March [24, 2003] hearing, counsel moved to dismiss TP 27,455 as to [Marta] Buruca because of a settlement agreement reached with her and Respondent's counsel in the District of Columbia Superior Court. Juan Fumes, the Petitioner in TP 27,456, did not appear for the third time. Counsel for the Petitioners did not know his whereabouts nor had she heard from him since before the initial hearing. The official record of these consolidated petitions closed on April 14, 2003.
9. On June 3, 2003, Daniel Wemhoff, [Esquire,] on behalf of the Respondent filed a Motion to Stay Proposed Order and Reopen Proceeding and an Amended Motion to Stay Proposed Order and Reopen Proceeding. The motion was denied for good cause (see, discussion supra).
10. All related findings of fact cited in the above Evaluation of the Evidence section of this Decision and Order are hereby incorporated by reference in this section of Findings of Fact.
11. Petitioner De Guzman is entitled to a total rent refund amount of \$27,503 total. Interest on this amount is \$603.78.
12. Petitioner Reyes is entitled to a total rent refund amount of \$2315 total. Interest on this amount is \$57.75.
13. Petitioner Payes is entitled to a total rent refund amount of \$5032 total. Interest on this amount is \$134.46.
14. Respondent willfully violated the Rental Housing Act of 1985, D.C. Law 6-10.

15. The Respondent acted in bad faith and [Petitioners] are entitled to a rent refund and treble damages. (see, discussion supra).

De Guzman v. Nuyen, TP 27,452-27,454 (RACD June 14, 2004) (Decision) at 29-31.

The hearing examiner concluded as a matter of law:

1. Respondent failed to file the proper rent increase forms with respect to the Certificate of Election of General Applicability for years 1998 through 1999, for which the Respondent implemented a rent charged increase to Petitioner De Guzman, in violation of 14 DCMR § 4204.10 (2004).
2. Respondent improperly filed a rent ceiling for Petitioner De Guzman's rental unit in violation of D.C. OFFICIAL CODE § 42-3502.06 and in violation of 14 DCMR § 4205.1 (2004).
3. Respondent increased the rent on Petitioner De Guzman's rental unit at a time when there were substantial housing code violations, in violation of D.C. OFFICIAL CODE § 42-3502.05 (a)(1)(A).
4. Respondent reduced the related service of timely maintenance and repairs to Petitioners De Guzman in TP 27,452; Petitioner Reyes in TP 27,453; and Petitioner Payes in [TP 27,454] in violation of D.C. OFFICIAL CODE § 42-3502.11 and 14 DCMR § 4211.6 (2004).
5. Respondent illegally raised the rent charged to Petitioner Payes without giving Petitioner a proper 30-day notice in violation of 14 DCMR § 4505.1 (2004).
6. Respondent illegally raised the rent charged to Petitioner Payes without 180 days having lapsed since the last rent increase in violation of 14 DCMR § 4206.5 (2004).
7. Respondent willfully violated the Act when he substantially reduced Petitioners' related services.
8. The Petitioners are entitled to a rent refund and treble damages based on the violations of the Act pursuant to D.C. OFFICIAL CODE § 42-3501.01.

Id. at 31-32.

II. ISSUES ON APPEAL

The housing provider filed a timely notice of appeal on June 28, 2004. In his notice, the housing provider stated:

1. The Respondent, by obeying the Federal laws, was unable to be present at the hearing.
2. Also, the Respondent, due to his incarceration situation, could not file the response to the Commission and the motion to dismiss all the complaints in a timely manner.
3. The Respondent was instructed by the Federal Prison Camp officials not to do business while serving his time in the Camp.
4. The Respondent also had not received proper notice of the Tenant Petition/Complaints.
5. The Respondent did not act in bad faith since he was denied the right to act.
6. There were typographical and technical errors in the Decision and Order such as in the property address, i.e., 130 Bryant Street instead of Gallatin Street, as well as in the calculation of interest.

Notice of Appeal at 1. On June 30, 2004 the housing provider submitted an amended notice of appeal; in the amended notice the housing provider stated: "The Respondent Did Not Receive the Original and Initial Petitions from the Petitioners." Amended Notice of Appeal at 1. The Commission held its appellate hearing on September 30, 2004.

III. DISCUSSION OF THE ISSUES

A.-C. Whether, as a result of his incarceration, the housing provider was unable to respond to the claims enumerated in the tenants' petitions.

The Commission's regulation concerning the initiation of appeals, 14 DCMR § 3802.5(b) (2004), provides that the notice of appeal shall contain the following: "The Rental Accommodations and Conversion Division (RACD) case number, the date of the Rent Administrator's decision appealed from, and a clear and concise statement of the alleged error(s) in the decision of the Rent Administrator." (emphasis added).

In these issues on appeal to the Commission, the housing provider states information with regard to his incarceration. However, the housing provider has failed to allege that these facts were as a result of errors in the Rent Administrator's decision. The Commission has previously held that appeal issues which fail to provide the Commission with a clear and concise statement of alleged errors in the decision of the Rent Administrator, as required by 14 DCMR § 3802.5(b) (2004), will be dismissed. See Tenants of 829 Quincy St., N.W. v. Bernstein Mgmt. Co., TP 25,072 (RHC Sept. 22, 2004); Battle v. McElvene, TP 24,752 (RHC May 18, 2000); Pierre-Smith v. Askin, TP 24,574 (RHC Feb. 29, 2000). The statements made by the housing provider in issues one (1) through three (3) do not allege errors in the decision by the hearing examiner. Accordingly, these appeal issues are dismissed.

D. Whether the housing provider received proper notice of the Tenant Petition/Complaints.

When the housing provider failed to appear at the hearing before the Rent Administrator, he relinquished standing to appeal the merits of the hearing examiner's decision. See Radwan v. District of Columbia Rental Hous. Comm'n., 683 A.2d 478, 481 (D.C. 1996); see also, Alexandra Corp. v. Armstead, TP 24,777 (RHC Aug. 15, 2000).

However, the Commission may set aside a default judgment if the housing provider satisfies the four factor test articulated by the court in Radwan. The housing provider must have 1) acted promptly; 2) acted in good faith; 3) presented a prima facie adequate defense; and most importantly, 4) the housing provider must not have received actual notice of the hearing. If the housing provider could prove that he did not receive notice, he would be given an opportunity to assert his legal rights, on remand. Id. If the housing provider failed to prove that he did not receive notice, he is not entitled to an appeal, notwithstanding the presence of the other factors. Radwan, 683 A.2d at 478.

1. Housing provider acted promptly, but not in good faith.

In establishing his defenses, the housing provider must also have acted promptly, in good faith. See Radwan, supra. The housing provider filed a timely appeal in the Commission, but the record includes evidence that the housing provider did not act in good faith. In this case, the housing provider's efforts to continue the hearing were untimely. The RACD date stamp on the motion for continuance indicates that it was filed on February 21, 2003, requesting the continuance of a hearing scheduled for February 24, 2003. According to the regulations, a motion for continuance must be "served on the opposing parties and the hearing examiner at least five (5)² days before the hearing." See 14 DCMR § 4008.6 (2004). Furthermore, the record reflects that the housing provider actually received the official reschedule notice of hearing between January 31, 2003, the date of delivery according to the United States Postal Service and February 3, 2003, the mailing date of the housing provider's motion for continuance according to its certificate

² Although it is within the hearing examiner's discretion to shorten the time limit "in extraordinary circumstances," the hearing examiner did not shorten the time limit in this case. Consequently, the housing provider's motion was dismissed as untimely.

of service.³ Despite the denial of the housing provider's motion for continuance, the hearing was rescheduled to March 25, 2003. According to the record, the housing provider made no further attempts to contact the RACD until Daniel Wemhoff, Esquire filed a "Motion to Stay Proposed Decision and Reopen Proceedings" on June 3, 2003. Although the housing provider's ultimate appeal to the Rental Housing Commission was timely filed, the record indicates that the housing provider had notice of the on-going series of hearings from September 12, 2002 onward, but waited until after the record closed on April 14, 2003 to "intervene (Decision at 3-4)."

2. Housing provider failed to establish a "prima facie adequate defense."

The Commission has also considered whether the housing provider established a "prima facie adequate defense" for his failure to appear; and whether he made efforts to continue the proceedings. See Radwan at 478. As discussed supra, the housing provider, in his notice of appeal, stated: "[[D]ue to his incarceration, he] was unable to be present at the hearing ... [and he] was instructed by Federal Prison Camp officials not to do business while serving his time in the Camp." While it is unclear what the housing provider meant by "do business," he was able to communicate with Daniel Wemhoff, Esquire during his incarceration;⁴ and he informed the Commission at the hearing on, September 30, 2004, that his office remained open and staffed with an employee to manage the properties and collect the rents throughout his incarceration. See Audio Recording, De Guzman et. al. v. Nuyen, TP 27,452-27,454 (RHC Sept. 30, 2004).

³ See Record (R). at 78.

⁴ See "Motion to Stay Proposed Decision and Reopen Proceedings," R. at 99; "Amended Motion to Stay Proposed Decision and Reopen Proceedings", R. at 104; and "Provider's Record Supplement to Reopen Proceedings." R. at 128.

Furthermore, the regulations stipulate the manner by which a party or representative may appear at a hearing. One feasible alternative to a personal appearance, available to the housing provider, was an appearance by a “managing agent or property agent.” The applicable regulation provides:

In any proceeding the following appearances may be made: ... managing agent or property agent, licensed by the District of Columbia and employed by a housing provider for the day-to-day management and operation of a housing accommodation, may represent an owner if only the owner is named as a party.

14 DCMR § 4004.1(e) (2004). The employee that the housing provider authorized to carry out the “day-to-day management” of the housing accommodation could have likewise appeared at the hearing on his behalf. As a result, the housing provider has not established a “good cause” justification for his failure to appear. Radwan at 478.

3. Housing provider received actual notice.

At the hearing before the Commission, the housing provider requested “another chance to defend [himself],” despite his previous failure to appear. See Audio Recording, De Guzman et. al. v. Nuyen, TP 27,452-27,454 (RHC Sept. 30, 2004). In his notice of appeal, the housing provider argued that he did not receive notice of the petitions filed by the tenants. The hearing examiner’s decision addressed this issue. Finding of fact four (4) stated:

At the hearing on September 12, [2002] were three Petitioners and counsel for the Petitioners, Elizabeth Campbell. Also present was Francis Ogundeji, the resident manager for the housing accommodation. Mr. Ogundeji; claimed he was not in attendance as a representative but as an observer. He informed the Examiner that the Respondent was incarcerated. After the Examiner discovered that the Respondent had not been served notice of the hearing, Mr. Ogundeji accepted service of the Tenant Petition/Complaints and informed the Examiner that he would serve them on Mr. Nuyen and make arrangements for representation at the

next scheduled hearing date. The Examiner obtained the Respondent's address at the Petersburg Federal Correction Facility from Mr. Ogundeji and instructed the Scheduler to send notice of the hearing and the petitions to the Respondent. The matter was reconvened on October 16, 2002.

Decision at 30. The housing provider received proper notice of the Tenant

Petitions/Complaints: via service upon "employee/resident manager," Francis Ogundeji at the hearing on September 12, 2002, in accordance with the definition of a housing provider pursuant to § 42-3501.03(15) of the Act; and via personal service at the Petersburg Federal Correction Facility.

a. Service upon "resident manager" as housing provider

The housing provider does not dispute the hearing examiner's determination that Mr. Ogundeji was Mr. Nuyen's agent or "employee ... responsible for the collection of rents and performing other related duties in conjunction with the management company, USA Champion Home Realty," at the time of the initial hearing. Decision at 2. The Act, D.C. OFFICIAL CODE § 42-3501.03 (15)(2001), provides:

'Housing provider' means a landlord, an owner, lessor, sublessor, assignee, or their agent, or any other person receiving or entitled to receive rents or benefits for the use or occupancy of any rental unit within a housing accommodation within the District (emphasis added).

Consistent with his job description, "Mr. Ogundeji accepted service of the Tenant Petition/Complaints;" on behalf of the housing provider. Decision at 30. In addition, Mr. Ogundeji "informed the Examiner that he would serve them on Mr. Nuyen and make arrangements for representation at the next scheduled hearing date;" and the record reflects that the hearing examiner served Mr. Nuyen with a copy of the tenant petition and notice of the rescheduled hearing at the Petersburg Federal Correction Facility. *Id.* at 3.

b. Service upon owner at Petersburg Federal Correction Facility

On appeal, Mr. Nuyen does not argue that his resident manager, Francis Ogundeji, was not served with a copy of the tenants' petitions and notified of the October 16, 2002, hearing date. He argues, in the alternative, that he either did not personally receive a copy of the petitions or that due to his incarceration he was unable to participate in the process. See Amended Notice of Appeal. In the decision, the hearing examiner states, "[n]otice was sent directly to Mr. Nuyen at the Federal Correction Facility on January 30, 2003, and actually received on January 31, 2003."⁵ Decision at 3. Mr. Nuyen and Mr. Ogundeji, both received copies of the tenant petitions. The Commission's regulations state: "[A]ctual receipt of service shall bar any claim of defective service, except for a claim with respect to the timeliness of service." 14 DCMR § 3911.4 (2004). The evidence in the record supports the hearing examiner's determination that the housing provider received the proper notice of the hearing, and he failed to appear, send a representative, or timely request a continuance. As a result, the housing provider fails the four factor Radwan test, and therefore he lacks standing to appeal.

E. Whether there were significant "typographical" and/or "technical" errors in the hearing examiner's decision.

In his notice of appeal, the housing provider states: "There were typographical and technical errors in the Decision and Order such as in the property address, i.e., 130 Bryant Street instead of Gallatin Street..." As discussed, supra, the housing provider does not have standing to appeal the merits of the hearing examiner's decision because he

⁵ U.S. Postal Service Delivery Confirmation Receipt number 0302-1790-0001-7927-7256 shows that the notice was delivered on January 31, 2003. Therefore, notice was complete. R. at 286.

failed to appear at the evidentiary hearings after he received proper notice of such proceedings. See Radwan, 683 A.2d at 478. Therefore, the housing provider's sixth issue on appeal is dismissed.

F. Whether the hearing examiner's decision contained errors in the calculation of interest.

In addition, the housing provider alleged errors in "calculation of interest," in the hearing examiner's decision. The Commission notes that there are inconsistencies in the hearing examiner's calculations. The Commission has remanded the Rent Administrator's decisions due to "typographical errors, inconsistencies and omissions which [needed] clarification and correction." See Alexandra Corp. v. Armstead, TP 24,777 (RHC Aug. 15, 2000); see also, Fidelity Prop., Inc. v. Tenants of 3446 Conn. Ave., N.W., HP 20,355 (RHC May 24, 1989). The Commission's remand order was necessary because it was impossible to decide the issues raised by the housing provider's appeal, based on the inconsistencies in the record. In this case, the Commission must also remand the hearing examiner's decision for calculations of interest and findings of fact that are internally consistent.

1. TP 27,452, Petitioner De Guzman

The hearing examiner calculated the refund due to tenant/petitioner De Guzman for rent ceiling overcharges totaling \$6,230 during March of 1999 through December of 1999; the years 2000, 2001, and 2002; having rent ceilings of \$481, \$491, \$507 and \$507, respectively. See Decision at 25. In addition, there is a second chart, which calculated rent overcharges totaling \$850 for periods during January through August of 2001, and September of 2001 through September of 2002. The hearing examiner does not identify

“Chart B,” and it is unclear what violations correspond with the respective rent overcharges of \$600 and \$1950.⁶ In “Chart C,” the hearing examiner calculated a reduction in service refund totaling \$3,625 for deficiencies in heat, stove maintenance, and windows, during the years 1999 and 2000, when the rent ceilings were \$481 and \$491, respectively. The corresponding rent overcharges totaled \$32,115 after treble damages were assessed. In contrast, finding of fact number eleven (11) reads: “Petitioner De Guzman is entitled to a total rent refund amount of \$27,503 total. Interest on this amount is \$603.78.” Therefore, on remand, the hearing examiner shall make findings of fact and conclusions of law that are internally consistent with respect to the calculations of the rent refund and interest owed to petitioner De Guzman.

2. TP 27,453, Petitioner Reyes

The hearing examiner calculated the refund due to tenant/petitioner Reyes for a reduction in serviced caused by “[i]nfestation of insects and rodents” during January through May of 2001, a period of four (4) months and May of 2001 through September of 2002, a period of twenty (20) months; having rent ceilings of \$833 and \$860, respectively. The total overcharge of \$368 for the period from May of 2001 through September of 2002 was derived from the hearing examiner’s accurate calculation, subtracting \$533, the adjusted rent ceiling from \$625, the rent charged, yielding a \$92 monthly overcharge multiplied by four (4) months. The \$368 overcharge is the principal amount due to the tenant. The hearing examiner then trebled (multiplied by three (3)) the principal amount; yielding a total principal amount of \$1104. The hearing examiner then

⁶ The hearing examiner tabulated certain rent overcharges under the heading Chart B. The dollar amount, \$2,600 appears in the cell designated as the “total,” and it does not correspond with the mathematical sum of \$600 plus \$1,950, which equals \$2,550.

repeated this process for the remaining seventeen (17) months, yielding a total principal amount of \$3,315; and a grand total of \$4,419. The Commission has articulated the “formula for calculating simple interest [as] interest equals principal multiplied by the rate multiplied by the time ($I=PRT$).” See Hagner Mgmt. Corp. v. Brookens, et al., TP 3,788 (RHC Feb. 4, 1999). Notwithstanding a correct calculation of the principal (P) amount in this instance, the hearing examiner erred by failing to calculate the interest equation ($I=PRT$). Instead, the hearing examiner states the following: “The interest computation on the above rent refunds are incorporated in this Decision and Order by reference and are found in Charts A1, B1, C1, D1, E1, and F1 in Attachment A to the decision.” Decision at 29. The attachments referenced were summarily absent from the record. Moreover, findings of fact numbered eleven (11) through thirteen (13) state principal and interest amounts inconsistent with the hearing examiner’s calculations. Regarding petitioner Reyes, in particular, finding of fact number twelve (12) reads: “Petitioner Reyes is entitled to a total rent refund amount of \$2,315 total. Interest on this amount is \$57.75;” but the total included in the body of the decision is \$4,419. This calculation differs starkly from the total principal amount stated in the hearing examiner’s table of calculations. See “Chart D-[Reduction] in Service Refund” Decision at 27. Therefore, on remand, the hearing examiner shall issue findings of fact and conclusions of law that are internally consistent with respect to the calculations of the rent refund and interest⁷ owed to petitioner Reyes.

⁷ The regulations provide: “[The] Rent Administrator may impose simple interest on rent refunds...from the date of the violation...to the date of the issuance of the decision ...[according to] the judgment interest rate used by the Superior Court of the District of Columbia pursuant to D.C. OFFICIAL CODE § 28-3302(c) (2001), on the date of the decision (emphasis added).” 14 DCMR §§ 3826.1-3826.3 (2004). For calculation of simple interest, see also Hagner Mgmt. Corp., supra.

3. TP 27,454, Petitioner Payes

Likewise, the hearing examiner calculated the rent refund due to petitioner Payes for an improper rent increase from March of 2001 through June 2001; an improper thirty (30) day notice from July 2001 through September 2002; and a reduction in services from March of 1999 through September of 2002. The total rent refund amount is \$17,595; but finding of fact thirteen (13) reads: "Petitioner Payes is entitled to a total rent refund amount of \$5,032. Interest on this amount is \$134.46." Based on the internal inconsistencies throughout the hearing examiner's decision, it is impossible for the Commission to determine whether the calculations of interest are mathematically correct, following the formula for simple interest, $I=PRT$. As a result, the decision is remanded to the RACD for calculations of interest "for each month the rent refund was held in accordance with 14 DCMR § 3826.3 (2004)."⁸

IV. CONCLUSION

The hearing examiner's decision and order is AFFIRMED IN PART, and REMANDED IN PART. The Commission DISMISSES issues numbered one (1) through three (3) for failure to articulate a "clear and concise" statement of the alleged errors in the hearing examiner's decision. The Commission DISMISSES issue number four (4) because the evidence in the record supports the hearing examiner's determination

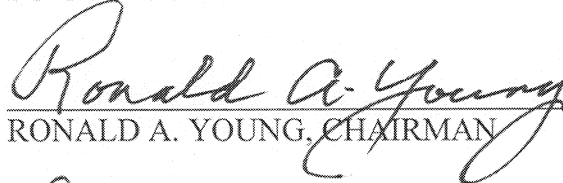
⁸ In Alexandra, the Commission stated that,

[The Commission] could not amend the Rent Administrator's order [because]... substantial evidence in the record [did not] render the inconsistency between the findings of fact and the order containing the alleged error a "plain error," because the correct fine amount is not obvious to the Commission... [t]herefore, the conflict must be remanded to the OAD for proceedings consistent with this decision in order to resolve the conflict between the finding of fact and the order. TP 24,777 (RHC Aug. 15, 2000) at 9-10.

See In re MLW, LLC, SR 20,103 (RHC June 18, 2007) at note 6.

that the housing provider received actual notice of the tenant petitions. Moreover, issue number five (5) IS DISMISSED because the evidence in the record supports a determination that the housing provider did not act in good faith throughout the hearing and appeal processes. Lastly, the Commission DISMISSES issue number six (6) with respect to the “typographical” and “technical” errors alleged as an attempt to challenge the “merits” of the hearing examiner’s decision, where the housing provider lacks standing to raise such issues in an appeal from a default judgment. The Commission REVERSES AND REMANDS, the hearing examiner’s calculations of interest as inconsistent with the findings of fact in the decision. In addition, the Commission orders that RACD issue the remand decision expeditiously pursuant to 14 DCMR § 3822.2 (2004).⁹

SO ORDERED.


RONALD A. YOUNG, CHAIRMAN


DONATA L. EDWARDS, COMMISSIONER

MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (2004), final decisions of the Commission are subject to reconsideration or modification. The Commission’s rule, 14 DCMR § 3823.1 (2004), provides, “[a]ny party adversely affected by a decision of the Commission issued to dispose of the appeal may file a motion for reconsideration or modification with the Commission within ten (10) days of receipt of the decision.”

JUDICIAL REVIEW

⁹ The applicable regulation states that, “[a]ny case remanded by the Commission to the Rent Administrator shall receive expedited and priority treatment.”

Pursuant to D.C. OFFICIAL CODE § 42-3502.19 (2001), "[a]ny person aggrieved by a decision of the Rental Housing Commission ... may seek judicial review of the decision ... by filing a petition for review in the District of Columbia Court of Appeals." Petitions for review of the Commission's decisions are filed in the District of Columbia Court of Appeals and are governed by Title III of the Rules of the District of Columbia Court of Appeals. The court may be contacted at the following address and telephone number:

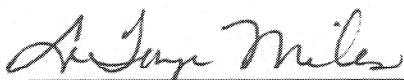
D.C. Court of Appeals
Office of the Clerk
500 Indiana Avenue, N.W., 6th Floor
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Decision and Order in TP 27,452-27,454 was mailed postage prepaid by priority mail, with delivery confirmation on this 9th day of May, 2008 to:

David Nuyen dba USA Home Realty Champion
2021 Sandstone Court
Silver Spring, Maryland 20904

Vytas Verkojis Vergeer, Esquire
Bread for the City Legal Clinic
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